

SENATE BILL 1601

By Yager

AN ACT to amend Tennessee Code Annotated, Title 29,
relative to abuse of the courts.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, is amended by adding the following
as a new chapter 40:

29-40-101.

(b) As used in this section:

(1) "Abusive civil action" means a civil action that is filed by a
party against another party or parties if the:

(A) Civil action is filed in whole or in part to harass or
maliciously injure the party against whom the action is filed;

(B) Claims, allegations, and other legal contentions made
in the action are not warranted by existing law or by a reasonable
argument for the extension, modification, or reversal of existing
law, or the establishment of new law;

(C) Allegations and other factual contentions made in the
civil action are without the existence of evidentiary support; or

(D) Issue or issues that are the basis of the civil action
have previously been filed in one (1) or more other courts or
jurisdictions by the person filing the present action, and the
actions have been litigated and disposed of unfavorably to the
party filing the action;

(2) "Abusive civil action offender" means a person who has been found by a court of record to have filed a civil action or actions that are prohibited by this chapter;

(3) "Abusive Civil Action Offender registry" means the registry created by § 29-40-107;

(4) "Civil action" means a civil action, as defined in Rule 2 of the Tennessee rules of civil procedure; and

(5) "Harass or maliciously injure" means the abusive civil action is filed with the intent or is primarily designed to:

(A) Exhaust, deplete, impair, or adversely impact the party's financial resources;

(B) Prevent or interfere with the ability of the party to raise a child or children for whom the party has legal custody in the manner the party deems appropriate;

(C) Force, coerce, or attempt to force or coerce the party to agree to or make adverse concessions concerning financial, custodial, support, or other issues when the issues in question have been previously litigated and decided in favor of the party;

(D) Force, coerce, or attempt to force or coerce the party to alter, engage in, or refrain from engaging in conduct when the conduct is lawful and is conduct in which the party has the right to engage;

(E) Impair, or attempt to impair the health or well-being of the party or a dependent of the party;

(F) Prevent, interfere, or adversely impact the ability of the party to pursue or maintain a livelihood or lifestyle at the same or

better standard as the party enjoyed prior to the filing of the action;
or

(G) Impair, diminish, or tarnish the party's reputation in the community or alienate the party's friends, colleagues, attorneys, or professional associates by subjecting parties without knowledge of or not reasonably relevant to the action to unreasonably or unnecessarily complex, lengthy, or intrusive interrogatories or depositions.

29-40-102.

There is created a cause of action for an abusive civil action. This cause of action may be:

(1) Raised by the defendant in an answer to a civil action or at any time during a civil action that the defendant reasonably believes abusive civil action conduct has occurred;

(2) Commenced by the defendant of the abusive civil action as a separate action in a court of record in the county where the abusive civil action is filed while the abusive civil action is still pending or within one (1) year after the termination of the abusive civil action; or

(3) Raised by the court on its own motion at any time during the abusive civil action.

29-40-103.

A separate civil action seeking to have a person declared an abusive civil action offender shall proceed as any other civil action and the Tennessee rules of civil procedure shall apply to the action.

29-40-104.

(a) If the defendant to a civil action alleges either by answer to the civil action or by motion made at any time the action is pending that the action constitutes an abusive civil action and seeks to have the person filing the action declared to be an abusive civil action offender, the court shall conduct a hearing in the same manner as a motion for summary judgment under Rule 56 of the Tennessee rules of civil procedure.

(b) At the time set for the hearing on the abusive civil action, the court shall hear all relevant testimony and may require any affidavits or other documentation as the court deems necessary.

29-40-105.

In a hearing conducted pursuant to § 29-40-104 or in a separate civil action commenced pursuant to § 29-40-102(2), there is a rebuttable presumption that a civil action is an abusive civil action and the person filing the action is an abusive civil action offender if the:

(1) Same or substantially similar issues that are the subject of the alleged abusive civil action have been litigated within the past five (5) years in two (2) or more other jurisdictions and the actions were determined in favor of the party alleging the abusive civil action;

(2) Party filing the alleged abusive civil action has used the same or substantially similar issues that are the subject of the current civil action as the basis for an adverse complaint against the party to a regulatory or licensing board and the regulatory or licensing board has dismissed the complaint or otherwise resolved the complaint without disciplinary action; or

(3) Party filing the alleged abusive civil action has been sanctioned under Rule 11 of the Tennessee rules of civil procedure or a similar rule or law in another state or the federal government for filing one (1) or more frivolous civil actions within the past ten (10) years of filing the current civil action alleged to be abusive.

29-40-106.

(a) If the court finds by a preponderance of the evidence that a person is an abusive civil action offender, and that any action pending before the court is an abusive civil action, the civil action shall be dismissed.

(b) In addition to dismissal of any pending abusive civil action within the jurisdiction of the court, the court shall:

(1) Tax all costs of any abusive civil action pending in the court at the time of the court's finding pursuant to subsection (a) against the abusive civil action offender;

(2) Award the person or persons against whom any abusive civil action is pending within the court's jurisdiction reasonable attorney fees and all reasonable costs of defending the abusive civil action or civil actions; and

(3) Direct the clerk to send a copy of the order declaring the person an abusive civil action offender to the board of professional responsibility, if the person is a licensed attorney, for any authorized disciplinary action against the person and a copy to the administrative office of the courts for inclusion on the "Abusive Civil Action Offender" registry. The order shall be forwarded to the administrative office of the courts within forty-five (45) days of issuance.

29-40-107.

(a) There is created an "Abusive Civil Action Offender" registry which shall consist of persons determined by a court of record pursuant to this chapter to be abusive civil action offenders.

(b) The registry shall be maintained by the administrative office of the courts based upon information supplied to the office by the clerks pursuant to § 29-40-106 (b)(3) and the registry shall be made available for public inquiry on the internet.

(c) The registry shall consist of the offender's name, date of birth, date of inclusion on the registry, and the county or counties in which abusive civil actions were filed by the offender. If available after reasonable inquiry, the clerk shall provide the Tennessee bureau of investigation with the offender's driver license number and issuing state, or any other state or federal identification number, and such other identifying data as the administrative office of the courts determines is necessary to properly identify the abusive civil action offender and exclude innocent persons. However, the registry available for public inquiry shall not include the person's social security number, driver license number, or any other state or federal identification number.

(d) On a quarterly basis, the administrative office of the courts shall send a copy of the name and other identifying information of each person on the registry to each clerk authorized to accept and file a civil action.

29-40-108.

(a) A person placed on the "Abusive Civil Action Offender" registry is prohibited from instituting a civil action in a court of this state for the period of time the person remains listed on the registry or from continuing a civil action that

was instituted prior to the date the person was determined to be an abusive civil action offender.

(b) Notwithstanding subsection (a) and consistent with the constitution of Tennessee, Article I, § 17, a person who is prohibited from instituting a civil action because the person was determined to be an abusive civil action offender may seek permission to file the action using the procedure set out in subsection (d).

(c) Prior to accepting a civil action instituted by an attorney or a pro se plaintiff, the clerk shall determine if the person instituting the civil action is listed on the "Abusive Civil Action Offender" registry. If the person is listed on the registry, the clerk shall inform the person that the civil action cannot be accepted unless the person follows the procedure set out in subsection (d).

(d)

(1) A person listed on the "Abusive Civil Action Offender" registry who wishes to institute a civil action during the time the person is on the registry must first appear before the presiding judge of the judicial district where the civil action is to be commenced to make application for permission to institute the civil action.

(2)

(A) The presiding judge may examine witnesses, including the abusive civil action offender, to determine if the proposed civil action is or is not an abusive civil action and if there are reasonable and legitimate grounds upon which the complaint is based.

(B) There is a rebuttable presumption that any proposed civil action is an abusive civil action if any of the defendants in the proposed action were also defendants in one (1) or more of the actions that were the basis for the person being declared an abusive civil action offender.

(3)

(A) If the presiding judge reasonably believes that the civil action the person is making application to file will be an abusive civil action, the application shall be denied and the presiding judge shall determine a time when the person may next make application to file a civil action in that judicial district.

(B) If the presiding judge reasonably believes that the civil action the person is making application to file will not be an abusive civil action, the judge may grant the application and issue an order permitting the filing of the civil action. The order shall be attached to the front of the complaint when the person files the civil action with the clerk.

(e) If the application for the filing of a civil action is granted pursuant to this section, the period of time commencing with the filing of the application requesting permission to file the action and ending with the issuance of an order permitting filing of the action shall not be computed as a part of an applicable period of limitations within which the civil action must be instituted.

(f) If after a person has made application and been granted permission to file a civil action pursuant to this section, the judge with jurisdiction over the action determines that the person is attempting to add parties, amend the

complaint, or is otherwise attempting to alter the parties and issues involved in the civil action in a manner that the judge reasonably believes would make the action an abusive civil action, the judge may order a continuance or nonsuit of the action and return it to the presiding judge for further disposition.

(g) If it is brought to the attention of the court, or on the court's own motion, that a person on the "Abusive Civil Action Offender" registry has instituted or continued a legal proceeding without application to do so being granted pursuant to this section, the court in which the civil action is pending shall dismiss the action or revoke the continuance.

29-40-109.

(a) After an abusive civil action offender has been on the "Abusive Civil Action Offender" registry for a period of seven (7) years, the offender may petition the court making the initial determination that the person was an abusive civil action offender for removal from the registry.

(b) The court shall conduct a hearing to determine if the offender has attempted to file any abusive civil actions while on the registry or if there is otherwise good cause shown why the offender should not be removed from the registry. Any person against whom an abusive civil action was filed by the offender may appear and offer testimony at the hearing.

(c)

(1) If the court reasonably believes that the offender will not file an abusive civil action in the future, the court shall order the offender removed from the registry and send the administrative office of the courts an order to remove the offender's name and other information from the registry.

(2) If the court reasonably believes that the offender will file another abusive civil action in the future, the court shall deny the offender's petition and the offender shall not petition the court for removal from the registry again for a period of three (3) years.

SECTION 2. This act shall take effect July 1, 2018, the public welfare requiring it. Evidence of conduct constituting an abusive civil action under this chapter that occurred prior to the effective date of this act may be used in a cause of action that is filed or motion that is made pursuant to § 29-40-102 on or after the effective date.